



DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2014–0003]

Americans With Disabilities Act: Proposed Circular Amendment 1

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of availability of four additional proposed circular chapters and request for comments.

SUMMARY: The Federal Transit Administration (FTA) has placed in the docket and on its Web site proposed guidance in the form of four additional circular chapters to help transportation providers meet the requirements of the U.S. Department of Transportation's (DOT) Americans with Disabilities Act (ADA) regulations. These proposed chapters include Chapter 1 (Introduction and Applicability), Chapter 2 (General Requirements), Chapter 5 (Equivalent Facilitation), and Chapter 8 (Complementary Paratransit Service). Along with the proposed chapter on vehicle acquisition published on October 2, 2012, these chapters are part of a series of approximately 12 chapters that will compose a complete ADA circular. By this notice, FTA invites public comment on these four additional proposed circular chapters, as well as suggestions for specific issues to address in future chapters.

DATES: Comments must be submitted by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Late-filed comments will be considered to the extent practicable.

ADDRESSES: You may submit comments to Docket No. FTA–2014–0003 by any of the following methods:

Federal eRulemaking Portal: Go to www.regulations.gov and follow the online instructions for submitting comments.

Mail: Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.

Hand Delivery or Courier: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.

Fax: (202) 493–2251.

Instructions: You must include the agency name (Federal Transit Administration) and Docket number FTA–2014–0003 for this notice at the beginning of your comments. You should submit two copies of your comments if you submit them by mail. If you wish to receive confirmation that FTA received your comments, you must include a self-addressed stamped postcard. Note that all comments received will be posted without change to www.regulations.gov including any personal information provided and will be available to Internet users. You may review DOT’s complete Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19477). *Docket:* For access to the docket to read background documents and comments received, go to www.regulations.gov at any time or to the U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, West Building Ground Floor, Room

W12–140, Washington, DC 20590 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For program questions, Dawn Sweet, Office of Civil Rights, Federal Transit Administration, 1200 New Jersey Avenue SE, Room E54–437, Washington, DC 20590, phone: (202) 366–4018, or email, *dawn.sweet@dot.gov*. For legal questions, Bonnie Graves, Office of Chief Counsel, same address, Room E56–306, phone: (202) 366–4011, or email, *bonnie.graves@dot.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Department of Transportation (DOT) issues regulations implementing the transportation and related provisions of the Americans with Disabilities Act (ADA) of 1990 and Section 504 of the Rehabilitation Act of 1973, as amended. The regulations at 49 CFR parts 27, 37, 38, and 39 set forth specific requirements transportation providers must follow to ensure their services, vehicles, and facilities are accessible to and useable by people with disabilities. The body of regulations is vast, covering multiple modes of public transportation, including fixed route bus and rail (e.g., rapid, commuter, and light rail); ADA complementary paratransit; general public demand responsive service; and ferry service. The Federal Transit Administration (FTA), as an agency within DOT, is charged with ensuring that providers of public transportation comply with the regulations. In 2010, FTA initiated a comprehensive management review of the agency’s core guidance to transit grantees on ADA and other civil rights requirements. A primary goal of the review was to assess whether FTA was providing sufficient, proactive assistance to

grantees in meeting civil rights requirements, as opposed to reacting to allegations of failure to comply with the requirements. Based on the review, FTA identified the need to develop an ADA circular similar to the circulars long in place for other programs. The current body of statutes and regulations in the ADA area can be imposing, and in some cases, extremely technical. FTA recognized value to the transit industry and other stakeholders in compiling and organizing information by topic into a plain English, easy-to-use format.

A circular does not alter, amend, supersede or otherwise affect the DOT ADA regulations themselves or replace or reduce the need for detailed information in the regulations. Its format, however, can provide a helpful outline of basic requirements with references to the applicable regulatory sections, along with examples of practices used by transit providers to meet the requirements. The examples of good practices are presented as local options; FTA recognizes that there are many different ways agencies can operationalize the regulatory requirements and ensure the delivery of compliant service. FTA proposed the phased development of a new circular, FTA C 4710.1, with the initial proposed chapter focused on vehicle acquisition (See 77 FR 60170, Oct. 2, 2012, <http://www.gpo.gov/fdsys/pkg/FR-2012-10-02/pdf/2012-24185.pdf>). FTA will not publish final versions of individual chapters, but rather will publish one final circular after receiving notice and comment on individual chapters.

Today's notice provides a summary of the four additional proposed chapters. These chapters do not contain any new requirements, policies, or directives. The chapters themselves are not included in this notice; an electronic version may be found on FTA's Web site, at *www.fta.dot.gov*. Paper copies of the circular may be obtained by contacting

FTA's Administrative Services Help Desk, at (202) 366-4865. After the summary of the four new chapters, this notice describes FTA's approach for publishing subsequent chapters and seeks suggestions on specific issues to address in those chapters.

After issuing the proposed chapter on vehicle acquisition in October 2012, FTA received 15 separate comments from individuals and organizations. A number of comments provided suggestions for modifying the format of the circular, including clearly distinguishing regulatory language from guidance, providing hyperlinks to the DOT ADA regulations and other important regulations, providing additional references, and cross-referencing other topics within the overall circular. FTA has incorporated many of these suggestions into the four additional proposed chapters issued with this amendment and has included additional examples of good practices and explanations of specific topics that benefit from elaboration. FTA welcomes additional comments on these format changes. FTA also received comments on the draft chapter itself, including some corrections and suggestions, which FTA will incorporate as appropriate, along with other general comments on the circular format, upon finalization of the entire circular.

FTA encourages stakeholders to provide comments on the content of these four proposed chapters, as well as make suggestions for future chapters.

II. Summary of Circular Amendment 1

Amendment 1 to the circular includes a table of contents for all 12 proposed chapters, including contents for the previously published proposed chapter on vehicle acquisition (Chapter 4), as well as for Chapter 1 (Introduction and Applicability), Chapter 2 (General Requirements), Chapter 5 (Equivalent Facilitation), and Chapter 8

(Complementary Paratransit Service). Chapter titles are presented for forthcoming chapters.

Proposed Chapter 1, “Introduction and Applicability,” summarizes the content of the proposed 12 chapters in both narrative and tabular form. The discussion of applicability describes the requirements of 49 CFR part 37 subpart B (Applicability). This discussion addresses the entities and transportation services addressed in the circular, with particular emphasis on services under contract or other arrangement and private entities receiving Section 5310 and Section 5311 funding. A discussion of requirements applicable to FTA grantees is presented next, followed by a section on the DOT Section 504 requirements, found in 49 CFR part 27. The next section addresses non-transportation ADA regulations (enforced by other agencies) that are potentially applicable to FTA grantees. Finally, the chapter discusses transportation services not addressed by this circular that other DOT operating administrations and other federal agencies enforce.

Proposed Chapter 2, “General Requirements,” explains the regulations related to nondiscrimination and other crosscutting requirements applicable to fixed route (rail and non-rail), complementary paratransit and general public demand responsive services. Regulations addressed in this chapter are from 49 CFR part 37 subparts A (General) and G (Provision of Service), with the exception of those subpart G requirements applicable only to fixed route service. The fixed route service requirements not addressed in Chapter 2 are addressed in forthcoming Chapter 6 (Fixed Route Service), which FTA will publish with a subsequent circular amendment. The Chapter 2 discussion of nondiscrimination

addresses the prohibition against discrimination and provides specific examples of prohibited practices.

Section 2.3 of Chapter 2 addresses the 49 CFR part 37 subpart G provisions, including the requirements for accessible service and maintaining accessible features. This includes guidance on steps to take when accessibility features are damaged or out of order, including good practices for communicating outages to individuals with disabilities and others. Subsection 2.3.2 addresses the crosscutting requirements for keeping lifts (and ramps) in operable condition and reporting lift failures and removing vehicles with inoperable lifts from service. (The requirements for alternative transportation applicable to fixed route service are discussed in forthcoming Chapter 6.) Subsection 2.3.3 addresses the requirements for using lifts and securements, with a discussion of the requirements to accommodate riders who use wheelchairs. This includes an explanation of when transit agencies may decline to carry a wheelchair/occupant as addressed in prior DOT rulemaking. Requirements for accommodating riders who use other mobility devices are then presented, followed by securement areas and securement systems, including permitted policies and procedures. This also addresses the tasks vehicle operators must perform such as assistance for securing wheelchairs and the use of securement systems, ramps, and lifts.

Section 2.3 also addresses other service requirements such as the use of service animals and accessibility equipment, traveling with a respirator or portable oxygen supply, and providing information about transportation services, including making communications capacity available through accessible formats and technology. This is followed by a

discussion of training requirements, including types of training (including refresher training) and the importance of having written policies and procedures.

Proposed Chapter 5, “Equivalent Facilitation,” discusses the requirements for seeking a determination of equivalent facilitation for vehicles and facilities, as contained in 49 CFR part 37 subpart B under the standards for accessible vehicles and facilities, respectively. The chapter includes a discussion of important considerations when seeking a determination based on FTA’s experience with prior requests. This includes recommended data collection, required and recommended submission materials, and public participation requirements for transit agencies and for manufacturers. The chapter concludes with a list of Do’s and Don’t’s of equivalent facilitation requests.

Proposed Chapter 8, “Complementary Paratransit Service,” addresses the requirements for complementary paratransit service as contained in 49 CFR part 37 subpart F, except for ADA paratransit eligibility, which is addressed in forthcoming Chapter 9. The chapter addresses the limited instances when an update to a paratransit plan may still be required. This is followed by a discussion of when transit agencies must follow specific public participation requirements associated with developing (or updating) paratransit plans and when proposing changes to reservations systems. This includes the requirement for transit agencies to create an ongoing mechanism for the participation of individuals with disabilities in the continued development and assessment of services.

Proposed Chapter 8 then addresses which entities are required to provide complementary paratransit service and the specific exemptions for commuter bus, commuter rail, and intercity rail (Amtrak) services. This is followed by a discussion of

each of the six complementary paratransit service criteria, including service area, trip reservations (response time), fares, operating without regard to trip purpose, hours and days of service, and operating without capacity constraints.

The capacity constraints section provides a detailed discussion of prohibited practices, including the prohibition against limiting the number of trips, waiting lists, and any operational patterns or practices that limit complementary paratransit service availability. This includes policies and/or practices that yield poor service quality that discourages use of the complementary paratransit service, such as untimely service trip denials, missed trips, and/or excessive trip lengths. The discussion also provides examples of other potential limits to complementary paratransit service availability such as untimely drop-offs and poor telephone performance.

Chapter 8 also addresses subscription service, including limits on subscription trips under certain circumstances. The chapter continues with a discussion of premium service that may exceed the minimum requirements. The chapter concludes with a discussion on requirements for dispatching accessible vehicles.

III. Publication Approach

With the publication of the four additional proposed draft chapters, FTA has now published five of the approximately 12 chapters that will compose FTA's ADA circular, as explained in Chapter 1 (Introduction and Applicability). When issued in its final form, the circular is intended to provide guidance specifically for recipients of FTA financial assistance that provide public transit. As such, requirements found in the DOT ADA regulations, for example, related to intercity rail (i.e., Amtrak), private motor coach

service (e.g., Greyhound), taxi service, and airport transportation will not be addressed in the circular.

Going forward, it is anticipated that the chapters will continue to be issued in groups. All chapters will be announced in the **Federal Register** for public notice and comment. FTA will not publish final versions of individual chapters, but rather will publish one final circular after receiving notice and comment on individual chapters.

IV. Conclusion

FTA seeks comments on the scope and content of the four chapters of the circular addressed in Amendment 1 (Chapter 1 (Introduction and Applicability), Chapter 2 (General Requirements), Chapter 5 (Equivalent Facilitation), and Chapter 8 (Complementary Paratransit Service)). FTA is seeking comments specifically as to whether there are areas in each of these chapters that need more clarification or explanation, topics that were overlooked, and areas where regulatory requirements are not clearly distinguished. We are also seeking examples of local practices that have proven effective that would be worth describing in the circular.

FTA continues to seek suggestions on which issues we should address in future chapters. Specifically, FTA seeks comments on which issues the industry finds most challenging to address, and in what areas guidance would be most valuable to transportation providers.

Therese W. McMillan,
Deputy Administrator.

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